



PATENT APPLICATION

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the Application of

Toshio IMAI et al.

Group Art Unit: 3771

Application No.: 10/517,992

Examiner: S. DOUGLAS

Filed: May 25, 2005

Docket No.: 122084

For: ASEPTIC FILLING METHOD

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

A Notice of Appeal is attached. Applicants respectfully request review of the Final Rejection mailed April 12, 2007 in light of the following remarks.

Claim 1 is pending in this application. The pending claim is rejected. This review is requested for the following reasons.

The Office Action rejects claim 1 under 35 U.S.C. §103(a) over WO 99/31006 to Lafleur. This rejection is respectfully traversed.

WO 99/31006 is understood to correspond to U.S. Patent Application Publication No. 2003/0008044. The references cited below are made to the U.S. Patent Application.

The Office Action asserts that Lafleur discloses filling content under a temperature within a range of 25°C to 60°C and asserts that Applicants have previously conceded this on page 4 of Applicants' February 12, 2007 Amendment. These assertions are both incorrect. Lafleur does not disclose a filling temperature of the content, and Applicants have not conceded that Lafleur discloses filling the content within any specified range.

In the February 12, 2007 Amendment, Applicants stated, "[h]owever, the disclosed temperature ranges to which the beverage is cooled do not correspond to, nor can they reasonably be considered to have suggested, filling the content in the synthetic resin container while maintaining a temperature of the content within a range of 50°C to 60 °C." More specifically, Applicants stated, on page 3, "[n]owhere in Lafleur does the reference teach the specific feature of filling the content under a temperature within a range of 50-60°C." These statements are drawn from, and emphasize, Applicants' broader argument that, although Lafleur discloses temperatures to which the content is cooled before filling, nowhere does Lafleur disclose filling temperatures. As such, Applicants are concerned that the Office Action mischaracterizes Applicants' clearly stated position regarding what Lafleur actually teaches.

The Office Action goes on to assert that, because the beverage is cooled to a temperature range below that in which resin containers deform under the action of excessive heat prior to transferring the cooled liquid to a filler unit, stating on page 3, "it would only make sense that maintaining this desired temperature range would be inherent and implied during normal use and operation of the system." Thus, the Office Action concedes that Lafleur does not explicitly teach filling the content in the synthetic resin container while maintaining a temperature of the content within a range of 50°C to 60 °C, as positively recited in claim 1. Rather, the Office Action appears to be relying on some theory of inherency. However, such a feature cannot reasonably be considered to be inherent in Lafleur.

The beverage in Lafleur is cooled in a heat exchanger system before being transferred to the filler unit. No maintaining of a specific temperature range is taught after the point at which the beverage is cooled, until the optional secondary pasteurization process, which does not correspond to a filling step. In such a system, it would not be implicit that the temperature of

the content would be maintained within a range of 50°C to 60 °C, or even that the filling temperature would correspond to the temperature to which the liquid is cooled in the heat exchanger at least because the system would allow for further heat loss during the exchange of the liquid between (1) the heat exchanger, (2) the filler unit and (3) the beverage container. The time required or allowed for any of these steps is not disclosed in Lafleur. In view of the multiple steps, of indefinite time, involved in the transfer of liquid between the stations described in Lafleur (none of which steps are disclosed as including maintaining a certain temperature of the content) it is not reasonable to consider filling the content in the synthetic resin container while maintaining a temperature in the content within a range of 50°C-60°C to be inherent in, or reasonably suggested by, Lafleur.

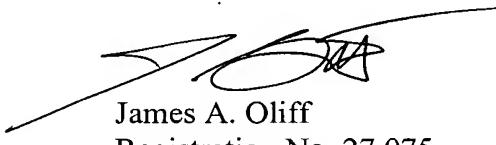
Further, MPEP §2112 states that the Patent Office must provide rationale or evidence tending to show inherency. Citing *In re Robertson*, 169 F.3d 743, 745, 49 USPQd 1949, 150-51 (Fed. Cir. 1990), MPEP §2112 states, "[i]nherency . . . may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient." Additionally, citing *Ex parte Levy*, 17 USPQ2d 1461, 1464 (Bd. Pat. App. & Inter. 1990), §2112 states, "[i]n relying upon the theory of inherency, the Examiner must provide a basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic necessarily flows from the teachings of the applied prior art" (emphasis in original). Maintaining the desired temperature range does not necessarily flow from any teaching of Lafleur and, as such, is not inherent according to the articulated standard. The assertion in the Office Action that "it would make sense that [the feature] would be inherent and implied" is not supportable by any teaching of Lafleur, and regardless, does not meet the articulated standard for a showing of inherency, as "making sense," based, it is presumed, on an opinion of the Examiner, is not the standard.

For at least the above reasons, the applied reference does not teach, nor can it reasonably be considered to have suggested, the combination of all the features positively recited in independent claim 1.

In view of the foregoing, Applicants respectfully request that the Review Panel review the substance of the April 12, 2007 Final Rejection in light of the above remarks. Applicants believe that upon such review, the Review Panel will determine that a *prima facie* case for obviousness of the subject matter of the pending claim over Lafleur has not been established. In this regard, favorable reconsideration and prompt allowance of claim 1 is earnestly solicited.

Should the Review Panel believe that anything further would be desirable in order to place this application in even better condition for allowance, the Review Panel is invited to contact Applicants' undersigned representative.

Respectfully submitted,



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Attachment:

Notice of Appeal

JAO:JEG/clf

Date: May 31, 2007

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